

**MONTANA**  
**DEPARTMENT OF TRANSPORTATION**  
**DISCRIMINATION**  
**COMPLAINT PROCEDURES**

## INTRODUCTION:

The purpose of the Montana Department of Transportation (MDT) Discrimination Complaint Procedures is to advise employees and MDT customers how to file a complaint and to function as a guide for conducting discrimination complaint investigations. These procedures pertain to employment issues, benefits and all MDT programs and services including contractual agreements.

- **Title VII of the Civil Rights Act of 1964** prohibits employment discrimination on the basis of race, sex, color, national origin, religion, age, and disability.
- **Title VI of the Civil Rights Act of 1964** prohibits discrimination in programs and services offered by the MDT on the basis of sex, national origin, race and color.
- **Title 49 Montana Code Annotated** also prohibits discrimination on the same basis as Federal law; however, it also prohibits discrimination on the basis of marital status and political belief.
- The **Americans with Disabilities Act** extends federal civil rights protection to people who are considered disabled.

These complaint procedures will be posted in all facilities owned or operated by the MDT. All MDT employees shall have access to these complaint procedures and may request additional information regarding the procedures at any time. To request additional information employees may contact their District Centralized Services Supervisor or the Civil Rights Bureau in headquarters.

The **general public** can access these procedures on the MDT web site or by contacting the Civil Rights Bureau at 444-6331 (local TTY 444-7696 Toll free TTY 1-800-335-7592)

Persons conducting discrimination investigations will be authorized members of the Civil Rights Bureau staff; however, investigations of issues involving employees in District offices will normally include the District Centralized Services Supervisor as a part of the investigating team. In some instances, the District Centralized Services Supervisor may be authorized by the Civil Rights Bureau Chief to conduct the investigation independently with general guidance and direction from the Civil Rights Bureau Chief. Under special circumstances, the MDT Director, the Chief of Staff, or the Human Resources Division Administrator may elect to have someone other than Civil Rights Bureau staff conduct specific discrimination investigations.

## **HOW TO FILE A COMPLAINT:**

**Citizens of Montana** who believe they have been denied the benefits or privileges of the programs and services offered by MDT because of discrimination should complete the form located at the end of this document and forward it to the MDT Civil Rights Bureau.

**MDT Employees** wishing to file a formal complaint may do so by filling out the form located on the last page of this document and returning the form to their supervisor, their District Centralized Services Supervisor or to a member of the Civil Rights Bureau staff. Supervisors and the District Centralized Services Supervisor will notify the Civil Rights Bureau Chief immediately upon receipt of a verbal or formal written complaint. Complaints should be filed within 180 days of the last alleged incident.

MDT employees may also file a formal complaint with the **Montana Human Rights Bureau**. Their address is P. O. Box 1728 – Helena, Montana 59620. The telephone number is (406) 444-2884 or (406) 444-0532 (TTY).

MDT employee complaints filed with the Montana Human Rights Bureau must be filed within 180 days of the last alleged incident. If the employee has also filed their complaint internally, the Montana Human Rights Bureau may extend the filing time to a total of 300 days.

**INFORMAL COMPLAINTS** are normally verbal in nature. An MDT employee may discuss a discriminatory behavior with a supervisor, a District Centralized Services Supervisor, or a member of the Civil Rights Bureau staff. The discussion may include a variety of issues and may include a request to have a behavior stopped. In any case, once a supervisor or any management level person becomes aware of a discriminatory behavior (**knew or should have known**) they must advise the Civil Rights Bureau Chief as soon as possible.

## **COMPLAINANT'S RIGHTS**

The complainant's rights are:

1. to be informed of the procedures for due process and timeliness,
2. to file a complaint using internal procedures or concurrently with the Montana Human Rights Bureau (mailing address and telephone number are located on previous page) or the Equal Employment Opportunity Commission,
3. to be kept informed of the status of the investigation,
4. to expect confidentiality to the extent possible,
5. to be free from retaliation, and
6. to receive a timely decision.

## **COMPLAINANT'S RESPONSIBILITY**

The complainant's responsibilities are:

1. to present factual information rather than hearsay and innuendo,
2. to be truthful and,
3. to maintain confidentiality and follow procedures.

## **WITNESSES' AND RESPONDENT'S RESPONSIBILITY**

The responsibility of the witnesses and the respondent are the same as the complainant's responsibilities.

## **CIVIL RIGHTS BUREAU CHIEF'S RESPONSIBILITY**

The Civil Rights Bureau Chief will:

1. either assign the complaint to an investigator, or conduct the investigation,
2. notify the Director and/or the Chief of Staff, the Human Resources Division Administrator, the appropriate Division/District Administrator and appropriate legal counsel that a complaint has been filed,
3. maintain confidentiality to the extent possible,
4. monitor the progression of the investigation, if assigned to a staff member, and
5. assure due process opportunities have been afforded to both parties, review all report documents and make recommendations to the Director and/or the Chief of Staff.

## **INVESTIGATOR'S RESPONSIBILITY**

The investigator's responsibilities include:

1. maintaining confidentiality to the extent possible,
2. developing and implementing an investigation plan,
3. eliciting information in a fair and objective manner, taking into consideration information based on facts rather than hearsay and innuendo, and
4. developing a timely and objective report which presents the facts obtained along with recommendations for a finding of cause or no cause and a recommendation for discipline, if appropriate.

## **DISTRICT/DIVISION ADMINISTRATOR'S RESPONSIBILITY**

As top level management administrators, they understand they are held to the highest standards of conduct for maintaining and administering a workplace free of discrimination and inappropriate work behaviors. The District/Division Administrator will:

1. notify the Civil Rights Bureau or the District Centralized Services Supervisor when they become aware, directly or indirectly, of discriminatory or inappropriate civil rights related behaviors,
2. provide adequate and appropriate resources, files, and staff time to conduct the investigation,
3. maintain confidentiality, and
4. administer discipline as deemed appropriate by the Director and/or the Chief of Staff and follow-up to assure issues have been resolved.

### **SUPERVISOR'S RESPONSIBILITY**

Supervisors will understand that they are held to a higher standard of conduct for maintaining and administering a workplace free of discrimination and inappropriate work behaviors. They will:

1. monitor the work environment, taking steps to prevent inappropriate civil rights related behaviors, taking action when inappropriate behaviors are identified or suspected;
2. notify their District/Division Administrator, the Civil Rights Bureau or the District Centralized Services Supervisor when they become aware, directly or indirectly, of discriminatory or inappropriate civil rights related behaviors;
3. assure employees know the identity of the District or Headquarters person delegated equal employment opportunity responsibilities, and
4. maintain confidentiality, to the extent possible, provide access to employees and to appropriate information as requested.
5. Supervisors in each District must assure current Discrimination Complaint Procedures, the sexual harassment poster, EEO poster and ADA posters are properly posted in their specific field office facility.

### **DISTRICT CENTRALIZED SERVICES SUPERVISOR'S RESPONSIBILITY**

The District Centralized Services Supervisor will act as the District EEO representative. They will:

1. assist Civil Rights Bureau staff in complaint investigations for their District, or in some cases conduct complaint investigations if requested by the Civil Rights Bureau,
2. assure appropriate civil rights posters are posted in all facilities,
3. provide equal employment opportunity and discrimination information to District employees when requested,
4. notify the Civil Rights Bureau when they have knowledge, directly or indirectly, that discriminatory behaviors may be occurring or when District employees wish to file a complaint, and
5. participate in developing and providing EEO training and provide EEO information to District employees.

### **CONDUCTING THE COMPLAINT INVESTIGATION:**

When the Civil Rights Bureau receives a complaint, an investigation will normally begin within three working days. The Civil Rights Bureau Chief will notify the Director and/or the Chief of Staff, the Human Resources Division Administrator, and the appropriate legal counsel that a complaint has been received.

The Civil Rights Bureau Chief will assign an investigator to the case. If appropriate, the Director and/or the Chief of Staff or the Human Resources Division Administrator may assign investigation responsibility to an investigator outside the Civil Rights Bureau.

The investigator will develop the investigation plan, discuss it with the Bureau Chief or Human Resources Administrator, if appropriate, and implement the following steps:

- STEP 1: Interview complainant to determine: What happened? Who is the respondent? Where and when did the incident(s) happen? How did the complainant react? Witnesses? Was it an isolated incident or part of a series? Has complainant spoken to anyone else about incident?
- STEP 2: Interview the respondent to determine: What happened? Where and when did the incident(s) happen? How did the complainant react? Witnesses? Was it part of an isolated incident or part of a series?

- STEP 3: Interview witnesses to determine what they saw and how the complainant and respondent reacted. Was it part of an isolated incident or part of a series?
- STEP 4: Review appropriate hard copy documents, which may provide information. Examples might include personnel files, training records, safety records, other disciplinary actions, etc.
- STEP 5: Weigh the evidence. Consider credibility of each party. Credibility issues might include such things as poor performance reviews, recent disciplines, previous complaints about the parties, etc.
- STEP 6: Once all facts have been obtained, write a detailed report making recommendations for appropriate findings and discipline, if appropriate.

The Civil Rights Bureau Chief, the Human Resources Division Administrator and legal counsel, will review the investigator's report. The purpose of this review is to assure the report is complete and that all issues have been covered. The report will be provided to the Director and the appropriate District/Division Administrator. Within five working days the District/Division Administrator will prepare a written response to the Director and the Civil Rights Bureau Chief. The response will indicate either agreement or disagreement. If the Administrator disagrees, the response must contain specific reasons. A meeting will be scheduled, within three working days of receipt of the Administrator's response, with the Director, the Administrator, the Human Resources Division Administrator and the Civil Rights Bureau Chief to discuss the reasons for the disagreement. The Director may request the Chief of Staff to participate in the meeting.

In order to assure due process is accomplished, the report will then be sent to the complainant and the respondent. The report is sent to home addresses by certified mail. If either party believes the facts are not presented accurately, they must notify the Civil Rights Bureau Chief in writing and request an informal meeting to discuss the issue(s) or to present new information. The purpose of the meeting is to hear new information or to correct erroneous facts, it is not to debate the findings. ***Each party has five working days from their receipt of the report to review and/or request an informal meeting.*** A request for an informal meeting must be in writing and must specify what the issues are. The informal meeting may be held in Helena, in a District location or by telephone conference call.

If neither party wishes an informal meeting, the report will be given to the Director and/or the Chief of Staff for signature, then sent to the appropriate District/Division Administrator for immediate implementation.



If an informal meeting is requested, a mutually acceptable date will be scheduled by the Civil Rights Bureau Chief within 10 working days of the request. The Civil Rights Bureau Chief or the Human Resources Division Administrator will chair the meeting. At the conclusion of the meeting the Chairperson will determine whether the information presented is such that it may cause the investigator's conclusions and recommendations to be re-evaluated. If so, the Chairperson may request additional investigation be done, or may assign a new investigator to reopen the case. Both the respondent and the complainant will be advised of the decision within two working days.

If the Chairperson determines the information provided during the informal meeting does not affect the investigator's conclusion and recommendations, the Director and the Chief of Staff will be notified; the report will be submitted for signature. The appropriate District/Division Administrator will immediately implement recommendations contained in the report.

## **THINGS YOU SHOULD KNOW:**

A **COMPLAINT** is an employee's or group(s) of employees' dissatisfaction with aspects of employment or work conditions because of discrimination. It could also be a person's or group(s) of person's dissatisfaction with the administration of any program, service, or activity because of discrimination.

A **COMPLAINANT** is a person or group(s) of people who file a complaint. (Includes temporary and seasonal employees as well as applicants for employment.)

**CONFIDENTIALITY** is defined as information which is treated as private and not for public dissemination. Although confidentiality can not be guaranteed, every effort will be made to keep the identity and issues of the complaint confidential. If an employee describes a situation which is contrary to or a violation of EEO policy, MDT may have the responsibility of immediately implementing action which will stop the behavior --- regardless of whether the inquiring party wishes to file a complaint or not.

**DISCRIMINATION AND DISCRIMINATORY ISSUES** are defined as unequal treatment due to race, color, creed, religion, sex, age, national origin, marital status, or political beliefs.

**DUE PROCESS** is the right for persons to be heard and defend their position.

A **FORMAL COMPLAINT** is presented in writing using the Discrimination Complaint Form and providing written documentation. An **INFORMAL COMPLAINT** is a complaint presented verbally. Informal complaints may result in formal investigations if it is determined that violations have occurred.

A **HOSTILE WORK ENVIRONMENT** is a workplace in which reasonable persons would consider themselves subjected to hostile, threatening, deliberate and unsolicited oral comments, gestures, or physical contacts that negatively affect their work-environment or the work environment of their co-workers. For purposes of this document, a hostile work environment complaint must pertain to one of the protected groups. (See definition for protected groups)

**INAPPROPRIATE BEHAVIORS** are those unwelcome and/or offensive behaviors, which involve any of the protected groups.

The term **KNEW OR SHOULD HAVE KNOWN** means that when a supervisor or other management level person knows or should have known that a discriminatory behavior is occurring in the workplace and that individual chooses to do nothing to correct the behavior, the employer, MDT, could be held liable.

The term **PROTECTED GROUPS** refers to those groups of persons who are protected from discrimination by the Civil Rights Act of 1964. The protected groups are age, race, color, sex, national origin, creed and disability. Montana law prohibits discrimination in the same protected groups but includes marital status and political belief.

The term **REASONABLE PERSON** is used to evaluate the unwelcomeness, severity, and pervasiveness of the alleged behavior from a reasonable person's viewpoint rather than stereotypical notions of accepted behavior.

**RETALIATION** is taking an adverse action strictly to repay injury in kind or to get revenge. Employees are prohibited from retaliating against a complainant, a witness or a respondent who exercised their rights in cooperating with a workplace investigation. This does not preclude an appropriate supervisor from taking disciplinary action against any employee when other MDT policy violations occur.

A **RESPONDENT** is the person against whom the complaint has been filed.

# MONTANA DEPARTMENT OF TRANSPORTATION

## DISCRIMINATION COMPLAINT FORM

Name: \_\_\_\_\_

ADDRESS: Home \_\_\_\_\_ Work \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

BASIS OF DISCRIMINATION (Check the appropriate box or boxes)		AREA OF DISCRIMINATION: (Check the appropriate box or boxes)	
<input type="checkbox"/>	Sex	<input type="checkbox"/>	Performance Appraisal
<input type="checkbox"/>	Sexual Harassment	<input type="checkbox"/>	Recruitment
<input type="checkbox"/>	Race/Color	<input type="checkbox"/>	Selection Process
<input type="checkbox"/>	National Origin	<input type="checkbox"/>	Promotion
<input type="checkbox"/>	Religion	<input type="checkbox"/>	Disciplinary Action
<input type="checkbox"/>	Creed	<input type="checkbox"/>	Transfer
<input type="checkbox"/>	Age	<input type="checkbox"/>	Termination
<input type="checkbox"/>	Disability	<input type="checkbox"/>	Layoff (RIF)
<input type="checkbox"/>	Marital Status	<input type="checkbox"/>	Training
<input type="checkbox"/>	Political Belief	<input type="checkbox"/>	Demotion
<input type="checkbox"/>	Retaliation for Civil Rights Activity	<input type="checkbox"/>	Other (specify)
<input type="checkbox"/>		<input type="checkbox"/>	

Briefly describe the discriminatory behavior that occurred. Include specific dates and names of witnesses, if any. Additional pages may be attached if necessary. Include the corrective action you are seeking. Complaints filed on behalf of third parties must describe or identify the victims of the discrimination.

Signature

Date

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The Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For further information, call (406) 444-6331 or (406) 444-7696 (TTY).